



Oregon

Theodore R. Kulongoski, Governor

Board of Massage Therapists

748 Hawthorne Ave NE

Salem, OR 97301

Phone: (503) 365-8657

Fax: (503) 385-4465

www.oregon.gov/OBMT

BOARD & WORK SESSION MEETING MINUTES

April 17-18, 2009

Attendance for April 17, 2009 Meeting

Board Members:

Jordan Barton, LMT, Chair
Kathy Calise, Public Member, Vice Chair
Jeanna Catalano, LMT
Crystal Collier, LMT
Heather Bennouri, LMT
Craig McMillin, Public Member
Tim Driscoll, DC, Public Health Member

Staff:

Patty Glenn, Executive Director
Diana Nott, Enforcement Coordinator

Public: Angie Miller Susan Holloway Cheryl Cosgrove

Call to Order -

Barton called the meeting to order at 1:40pm. Role call was performed. **Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin** were in attendance.

1) Approve Agenda – Calise moved to approve the agenda as amended. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

2) Law Enforcement Action

a) Case 728 Shaundel Knights a.k.a. “Odessa” – Bennouri moved to issue a Notice of Proposed Action for four violations of ORS 687.021(2)(a), advertising massage without a license, for a total civil penalty of \$3,500. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

b) Case 729 Daniel Carpenter – Calise moved to issue a notice of proposed action for one violation of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1), practicing massage without a license, for a total civil penalty of \$1,500. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

c) Case 731 Jean Greenfield a.k.a. “Sarah” – Catalano moved to issue a notice of proposed action for eleven violations of ORS 687.021(2)(a), unlicensed advertising of massage, and one violation of ORS 687.021(1) practicing massage without a license, for a total civil penalty of \$10,000. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

d) Case 781 Kimberly Payne – McMillin moved to issue a notice of proposed action for one violation of ORS 687.021(2)(a), unlicensed advertising of massage, and eight violations of ORS 687.021(1), practicing massage without a license, for a total civil penalty of \$8,500. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

e) **Closed Case Report - Bennouri** moved to accept the closed case report as presented. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

<u>Case No. 182</u>	<u>Jeff Ghazal</u>
Allegation: Unlicensed Practice	Closed: Final Default Order

<u>Case No. 525</u>	<u>Julie Grant</u>
Allegation: Unlicensed Practice	Closed: Final Default Order

<u>Case No. 529</u>	<u>Danielle Burget</u>
Allegation: Unlicensed Practice	Closed: Final Default Order

<u>Case No. 621</u>	<u>Marlyn Fine</u>
Allegation: Unlicensed Practice	Closed: Stipulated Agreement Issued

<u>Case No. 667</u>	
Allegation: Unprofessional Conduct	Closed: No Action Taken

<u>Case No. 669</u>	<u>Abigail Houston</u>
Allegation: Unlicensed Practice	Closed: Stipulated Agreement Issued

<u>Case No. 722</u>	<u>Rhiannon Miller</u>
Allegation: Unlicensed Practice	Closed: Final Default Order

<u>Case No. 732</u>	<u>Samantha Timmins</u>
Allegation: Unlicensed Practice	Closed: Final Default Order

<u>Case No. 736</u>	
Allegation: Sexual violation	Closed: No violation found

<u>Case No. 775</u>	
Allegation: Practicing while Inactive	Closed: Unable to substantiate

3) **Public Comments** – Angie Miller commented that after listening to the enforcement discussions that she will be sure to never let her license lapse. There was a brief discussion on what the Board will accept for CE, the opportunity to obtain free CE and the Board process for renewal.

4) **Approve Minutes of February 20, 2009 and March 20, 2009** – **Collier** moved to approve the minutes of February 20, 2009 and March 20, 2009. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

5) **Directors Report - Glenn** provided the Board with a demographic report which included the number of active and inactive licensees, as well as a breakdown by age, ethnicity, gender and modality. There was a discussion on how the database pulls the information for the report.

a) **Staff Meetings** -. No discussion.

b) Finances -

i) 2009-2011 budget –Glenn presented the Board with a copy of budget vs. actual.

Glenn asked if the traveling Board meetings and work sessions made fiscal sense. **McMillin** stated that he felt it was the Board's obligation to continue as it has been by getting out into the communities. **Collier** believes that the presence of the Board in the communities, even without a large show of attendance at the meetings, is invaluable. **Calise** thinks that continuing with the traveling meetings and getting into the community will help when the Board has to take things to the legislature because there will be community knowledge and support. **Barton** believes that the Board should choose 4 places around the state and visit one each quarter to educate the community about Board and legislative happenings. **Glenn** believes that the Board should hold Town Hall/Q&A meetings in communities around the state and increase the CE class outreach to include rules and laws based on requests from LMT's. **Barton** thinks that the Board should visit the schools to go through the rules and laws. **Glenn** stated that we have been doing school presentations the past 5+ years, both on rules and laws and on the practical exam, unfortunately only about ½ of the schools take regular advantage of that opportunity. **Glenn** continued with the review of the finances, indicating that income is trending very well. She reported that disappointingly late fees were trending high despite the boards various attempts to encourage on time renewals. Civil Penalties being collected are coming in much higher than budgeted due to increased collection activity. Payroll is on track. Computer expenses are under budget because we have not yet implemented the new server. Examiner payments are under budget. Investigative services are over budget due to several serious cases, this is offset by AAG fees which are under budget. There was discussion on office space and the 09-11 lease. **McMillin** praised **Glenn's** good work with budgeting.

c) 2009 Legislative session – The Board reviewed the bill summary detail report and where tracked bills currently stand. Our bill was sent back to committee without explanation. In addition, Reflexology, Polarity and Bowen have not moved out of committee and appear to be dead. There was a discussion on how to parse out the issues into multiple bills for a more effective outcome in the future. There was a discussion on HB2057 and its fiscal impact to our agency of approximately \$127,000.

Calise asked about furloughs and budget cuts. **Glenn** said that it would be discussed in more detail with the budget conversation. The staff did request that if the forced furloughs go into effect, the office close for that one day per month. **Calise** agreed with the staff and stated that it's imperative for Oregonians to see what is happening with state budget cuts.

d) Health Related Boards meeting – no report.

e) SIBA update – The meeting focused on legislative session and the Federal Stimulus Package's, affect on COBRA and the board.

6) Committee Updates

a) Education/Scope of Practice Committee – The meeting focused on the potential portfolio review process. Staff explained the current process for a candidate who did not attend an Oregon approved school. After discussion it appeared there were two groups of people a portfolio review process might apply to: massage therapists from an unlicensed state and current LMT's from a state with different training requirements. The committee discussed ideas on what they thought a process might look like, but wanted clarity and guidance from the Board. **Bennouri** would like to see a way that the applicant can provide totals that equal what Oregon requires. **Barton** suggested they be required to take and pass the MBLEx as part of the process.

The committee also discussed online classes. They were not clear about this charge from the Board. There was a discussion on the vast differences between providers of distance education and the fact that there is no consistent standard. **Calise** agreed to ask the Board for clarity about this charge. Is there a push from somewhere that is driving this request? Does the Board really want distance education as part of minimum training requirements? The board decided to direct the education committee to table distance education and will watch for the issue to be addressed at the national level. The OBMT will continue with its current policy on distance education.

The committee reviewed an application from Kimberly Storr to serve as a committee member. The Committee agreed not to add Kimberly at this time as her addition would weigh the members heavily towards Lane Community College.

The committee asked if the Board would consider requiring LMT's to carry personal liability insurance. This topic will be added to the Board's upcoming LMT survey.

- 7) **FSMTB Updates** – FSMTB is plugging right along. Confirmed the FSMTB Annual meeting is being held in Nashville, October 9-11, 2009.
- 8) **Board Business** –
 - a) **Rules – Fingerprint & Budget** – postponed until Saturday
 - b) **NCB Correspondence** – The Board received a copy of an e-mail from NCB stating that they will be attending the May 2009 meeting to present, as requested.
- 9) **Public Forum** – Opportunity to share thoughts that pertain to agenda items. No public comments.

EXECUTIVE SESSION

The Board may enter into Executive Session to discuss certain matters on the agenda pursuant to: ORS 192.660(2)(f) to consider information or records that are exempt by law from public inspection, ORS 192.501(4) to review test questions, scoring keys and other data used to administer a licensing examination, ORS 192.660(2)(h) consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed, ORS 192.660(2)(k) to consider information obtained as part of an investigation of a licensee or applicant by a health professional regulatory board and ORS 192.660(2)(i) To review and evaluate the job performance of the Executive Director or staff. Prior to entering into Executive Session, the nature of and authority for holding the Executive Session will be announced.

The Board entered into Executive Session at 4:15pm and returned to Public Session at 5:01pm.

10) Action on Executive Session

- a) **Case 498 – McMillin moved** to defer action on this case for 180 days and to reconsider thereafter. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- b) **Case 654 – Collier moved** to issue a Notice of Proposed Action for 2 violations of OAR 334-010-0015(2)(c), for failure to disclose to the Board, for a total civil penalty of \$1,500 and suspend LMT's massage license. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- c) **Case 768 – McMillin moved** to defer to legal counsel for further consideration at the May Board Meeting. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**
- d) **Case 771** – No action needed at this time.

11) Announcements – No announcements.

12) Adjourn Meeting - Catalano Moved to adjourn the meeting at 5:04pm. In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.

Attendance for April 18, 2009 Meeting

Board Members:

Jordan Barton, LMT, Chair
Kathy Calise, Public Member, Vice Chair
Jeanna Catalano, LMT
Crystal Collier, LMT
Heather Bennouri, LMT
Craig McMillin, Public Member
Tim Driscoll, DC, Public Health Member

Staff:

Patty Glenn, Executive Director
Diana Nott, Enforcement Coordinator

Public: Janet Marie

Call to Order -

Barton called the meeting to order at 9:06am. Role call was performed. **Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin** were in attendance.

- 1) **Board Training/Expectations** – This was deferred to May and June 2009.
- 2) **CE Requirements for Senior Therapists** – There was a discussion on the request to reduce continuing education hours for senior therapists. The board does not believe this is in the best interest of public protection and has provided many ways for licensees to obtain CE credit without significant effort or expense. It was decided to add a statement to the web page, similar to the Mission Statement, to indicate the purpose of continuing education.
- 3) **An LMT Request for Delegation of techniques to caregivers** – There is no statutory authority allowing LMT's to delegate massage techniques to caregivers. The board discussed whether Certified Nursing Assistants (CNA) or Personal Care Assistants (PCA) can give massage. Individuals must hold a health related professional license and be acting within their scope of practice to utilize massage techniques. If, however, the scope of practice does not include massage then the individual would be considered to be unlicensed practice and subject to disciplinary action by the Board.
- 4) **School performance issues** – **Glenn** has a call out to the Oregon Department of Education to figure out each agency's role in this process. There was a discussion and consensus that there needs to be more oversight of the schools, but it was unclear how to proceed. It was suggested that suitable pass rates be a requirement of recertification every 2 years. **Calise** shared information on the EMT reaccreditation model. **Calise and Glenn** will meet with the Department of Education and the board's attorney to look at statutory authority and the possibly of setting standards for certifying instructors.
- 5) **Scope of Practice/Modalities**
 - a) **CE Class** – At the request of an LMT there was discussion on modalities that involve intra-bodywork. The Board has always been careful not to be restrictive to the practice of LMT's provided they are working in compliance with the ORS and OAR that pertain to massage. The Board does not ratify or give specific approval for CE courses but **Glenn** will communicate with the LMT regarding the suggestions they had. Those suggestions include providing a more graphic intake; clear documentation on why the client is seeking this type of work; and being careful to use appropriate verbiage. **Driscoll** will work on writing a policy to present to the Board for approval on intra-bodywork.

b) **Modalities Review – Glenn** suggested that the Board create a taskforce to look at modality issues. This was brought about after several modalities attempted exemption from the massage practice act this session that are currently regulated within massage. The board supported the idea of forming a task force. **Calise** agrees we need to have a clear understanding of this as the modality list just keeps getting larger. **Glenn** stated that the legislature would appreciate this work being done because they do not want to see these groups coming before them every session. She further stated that rather than falling into decisions based on politics and opinions this would support knowledge-based decisions. There was a discussion on the multiple discipline taskforce and who should be invited to participate. **Glenn** will reach out to Whitney Lowe and ask if he has interest in participation.

6) Outreach

a) Traveling Town Halls

- i) **Rules Changes – Bennouri** did a continuing education class as a regional rep for OMTA where she covered the changes to Oregon Administrative Rules. The class was well attended and has reinforced the community's desire for increased outreach.
 - ii) **Board overview/state of the profession – Glenn** would like to do traveling town hall meetings and CE courses in various communities around Oregon. She would love to have a Board member travel with her. She believes it will help the Board to be more transparent. **Glenn** will put together a schedule to present to the Board.
- b) **Ethics Classes – Glenn** wants to do quarterly ethics classes in Salem and in conjunction with traveling town hall meetings. The board agrees these are good ideas.

7) **Budget - McMillin** recognized that there is a tremendous amount of pressure on the infrastructure of the office and suggested that more help is needed. He suggested that **Glenn** look beyond entry-level and look into reorganizing the office, be it in the area of exams, administration or law enforcement. The Board looks to **Glenn** to manage the office and take care of herself. **Glenn** believes there is a benefit to what **McMillin** is saying.

Additional topics that came up during work session discussion: The Board will begin doing LEDS background checks on 100% of the exam applications received in the next couple of weeks and then in the next few months will implement LEDS checks on every renewal application as well. There is no added fixed expense to the agency but it will add additional staff time. **Glenn** will put together information for LMT's on the running of LEDS checks.

The issue of fingerprinting will need to be looked at more closely, as it's costly and rules would need to be promulgated. The Board reviewed what the rules on fingerprinting would look like. After discussion the board decided to leave fingerprinting discretionary at this time and not require it of every applicant.

In May, **Glenn** will provide the board with an updated itemized budget to the Board. **McMillin moved** to change Rule 334-001-0012 to read: The Oregon Board of Massage Therapists hereby adopts, and fully incorporates herein, the Oregon Board of Massage Therapists' 2009-2011 Biennium Budget of \$1,300,000. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin.**
Opposed: None. Motion carries.

The Rules hearing in June will include budget and clean up from the last rules change. In May, when the Board adopts the detailed budget, **Glenn** would like to send a copy of that detailed budget to legislators to encourage their input into the process.

Calise asked if the Board had made any determination on releasing exam results to schools of origin for candidates who take the Oregon Practical Examination. She would like for there to not be an opt-out option and that all applicants sign a statement saying that their results will go to their schools.

McMillin moved to add a release of exam statistic information to the schools, effective July 1, 2009. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**

Bennouri moved to adjourn the meeting at 11:27am. **In favor: Barton, Bennouri, Catalano, Collier, Calise, Driscoll and McMillin. Opposed: None. Motion carries.**